

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

-v-

Case Number:  
77-71100

STATE OF MICHIGAN AND CITY  
OF DETROIT, ET. AL.

Defendants,

\_\_\_\_\_ /

MOTION  
BEFORE THE HONORABLE JOHN FEIKENS  
UNITED STATES DISTRICT JUDGE

858 U. S. Courthouse & Federal Building  
231 West Lafayette Boulevard West  
Detroit, Michigan 48226  
WEDNESDAY, MAY 17<sup>TH</sup>, 2006

APPEARANCES:

For the Plaintiff:

For Defendant Detroit/DWSD: Mark Jacobs, Esq.  
Robert Franzinger, Esq.

For Defendant Oakland County: Donald Miller, Esq.

For Defendant Wayne County: Patrick McCauley, Esq.

Court Reporter: Joan L. Morgan, CSR  
Official Court Reporter

Proceedings recorded by mechanical stenography.  
Transcript produced by computer-assisted  
transcription.

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1 Detroit, Michigan

2 Wednesday, May 17<sup>th</sup>, 2006

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4 THE COURT: The Court calls the case number 77-  
5 71100, The United States versus State of Michigan, Et. Al.

6 THE COURT: Good morning everyone.

7 MR. FRANZINGER: Good morning, your Honor.

8 MR. JACOBS: Good morning, your Honor.

9 MR. MILLER: Good morning, your Honor.

10 THE COURT: We won't take a lot of time on this  
11 morning because I'm sure you're all anxious going over to  
12 the Ren Cen and register for the Sixth Circuit Conference.

13 Are you going?

14 MR. FRANZINGER: I'm thinking about it, your  
15 Honor, for certain portions.

16 THE COURT: Off the record.

17 (Off the record discussion held.)

18 (Proceeding continuing in open court.)

19 THE COURT: Let me cut to the quick on this. We  
20 are here about contract WS 623.

21 Now, I'm of the opinion that the difficulty that  
22 is encountered here and I'm somewhat surprised of what  
23 happened, Mr. Jacobs, but I can't understand how the  
24 charges made against the entire system, it just doesn't  
25 make sense and I think you admit that.

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1 MR. JACOBS: Oh, we acknowledge that in our brief  
2 that the cost of WS 623 --

3 THE COURT: I can't hear you. Do you want to  
4 stand up here?

5 MR. JACOBS: Oh, I'm sorry. I apologize.

6 THE COURT: You admit that you agree; don't you?

7 MR. JACOBS: Yes, we did, your Honor.

8 THE COURT: So to me the only issue is that: How  
9 is that to be repaid? And I thought, too, there is some  
10 disagreement between the parties as to the look-back  
11 arrangement. I'm not sure just where you stand on that  
12 because DWD has frequently used the look-back arrangement  
13 over the years that I've been associated with this problem.  
14 It is an available tool in order to get the money back to  
15 correct the situation.

16 Maybe we ought to talk about to today unless you  
17 both want to say something more about that. The only issue  
18 is how are we going to do it? Should we use the look-back  
19 situation, or -- well, do you want some time to think about  
20 that? What's your take?

21 MR. JACOBS: Your Honor, the amount of money  
22 involved in this contract is not significant, and it's not  
23 possible to adjust on an on-going forward basis, future  
24 rates to adjust for the improvisation in the '06-'07 rates  
25 that resulted from the inclusion of the costs of WS 623 in

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1 the '06-'07 rates. It's the inclusion of those costs as a  
2 common cost --

3 THE COURT: How can you do that, through a  
4 readjustment of raises in the future as to that?

5 MR. JACOBS: Well, it would have to be done from  
6 future rates, that's correct, if it were to be done at all,  
7 but --

8 THE COURT: Well, there's no question about it's  
9 got to be done. What do you mean if it were to be done at  
10 all? It has to be done.

11 MR. JACOBS: Well, that -- and this requires  
12 perhaps a lot more discussion than what we may have time  
13 for today because the way that Detroit's water rates are  
14 set, is very different than the way the sewer rates are set  
15 in which this Court was --

16 THE COURT: I didn't allow you to charge contract  
17 even though it says for water to the entire system. That's  
18 where it went wrong.

19 MR. JACOBS: Well, it's an inquisition, but -- if  
20 you give me --

21 THE COURT: What does a rate inquisition mean,  
22 wrong?

23 MR. JACOBS: Well, could I give a little  
24 background on how water rates are set because --

25 THE COURT: I don't need any background on that,

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1 Mr. Jacobs. I've been in this case longer than you have.

2 MR. JACOBS: Oh, I understand that, but you've  
3 never looked at how water rates are actually set.

4 There are a number of --

5 THE COURT: I'm going to cut to the quick on this  
6 and I don't want to hear any more about that.

7 All I'll let you do is to have 30 days if you  
8 want to decide how this matter is going to be readjusted,  
9 whether it should be through the use of the familiar look-  
10 back arrangement or in some other way that you think is  
11 more equitable.

12 MR. JACOBS: That will be fine, your Honor.

13 THE COURT: Now, do either of you gentlemen wish  
14 to comment on that?

15 MR. MILLER: The only further comment that I would  
16 have, your Honor -- Don Miller for Oakland County.

17 The only further comment I would have is in our  
18 pleadings, your Honor, we asked the question whether or not  
19 any of the costs in contract WS 623 were included in any  
20 prior rate years before 2006, 2007, because the date of the  
21 contract was 1999, and the work was to have commenced in  
22 the year 2000. We were just curious whether or not any of  
23 the costs in that contract would have been included in  
24 earlier rate years before 2006 and 2007.

25 THE COURT: Well, you can do that in one of two

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1       ways: You can either address it in an interrogatory or you  
2       can work it out when you reply in the next 30 days.

3               MR. MILLER: Are you looking for a response from  
4       both parties? Is that what you mean, your Honor?

5               THE COURT: Yes.

6               MR. MILLER: We simply don't object --

7               THE COURT: You don't have to tell me how if you  
8       don't have an idea.

9               If you don't have an idea as to how it should be  
10       adjusted, I know what to do.

11              MR. MILLER: Very well, your Honor.

12              THE COURT: I want to give you a chance to do  
13       that.

14              Mr. McCauley?

15              Mr. McCAULEY: Good morning.

16              Patrick McCauley, representing Wayne County.

17              We would concur in whether to look back and  
18       adjust the amount of credit. We can work that out.

19              The other issues I've raised to the Court, is we  
20       would like to have some means of verification that  
21       eventually this has been done whatever method that  
22       eventually may be.

23              THE COURT: Well, is 30 days time enough?

24              MR. McCAULEY: Thirty days I think would be fine,  
25       your Honor, for allow counsel to get together to see if we

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1 can come up with a common plan for the Court's approval.

2 THE COURT: How about, sir, is 30 days enough  
3 time?

4 MR. JACOBS: Thirty days will be fine, your Honor.  
5 I guess the question is will we have the opportunity to  
6 make further adjustments in the rates if we find that there  
7 are other charges that were improperly allocated to the  
8 city of Detroit?

9 THE COURT: Of course you will have the  
10 opportunity.

11 MR. JACOBS: I would request that this issue be  
12 deferred until we get into the issue of --

13 THE COURT: That said, that said. I don't have to  
14 say how an adjustment should be made. I want you folks to  
15 tell me in 30 days how you think it should be done. That's  
16 all I ask you.

17 There's no question that this particular  
18 contract, WS 623, should not have been applied in the rates  
19 system -- in the rate mechanisms to the system itself.

20 You don't agree on that.

21 MR. JACOBS: We don't agree on that.

22 THE COURT: So the question is: How do we want to  
23 adjust it? And we'll wait to another day, Mr. Jacobs. Your  
24 argument is coming back to the same thing how water rates  
25 are paid. It's not just DWSD rates, structures, but

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1 nationally.

2 It's best to be correct.

3 Thirty days.

4 MR. JACOBS: Thank you, your Honor.

5 THE COURT: The only thing I'm interested in right  
6 now is SW 623.

7 MR. JACOBS: I understand that.

8 THE COURT: Anything further?

9 MR. JACOBS: No, sir.

10 MR. MILLER: No, your Honor.

11 MR. McCAULEY: No, your Honor.

12 THE COURT: Oh, my law clerk is calling my  
13 attention that there are five contracts here that were in  
14 dispute Those are contracts WS 650, WS 657, WS 651, 623,  
15 and 812. What I intend to do approve those contracts.

16 Is there any observation any of you would wish to  
17 make with regard to that's what I intend to do?

18 MR. McCALULEY: No, your Honor.

19 MR. MILLER: No, your Honor.

20 THE COURT: Mr. Jacobs?

21 MR. JACOBS: Nothing further, your Honor.

22 THE COURT: With that said then, we will stand in  
23 recess.

24 (Proceedings, concluded.)

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CERTIFICATE

I, JOAN L. MORGAN, Official Court Reporter for the  
United States District Court for the Eastern District of  
Michigan, appointed pursuant to the provisions of Title 28,  
United States Code, Section 753, do hereby certify that the  
foregoing proceedings were had in the within entitled and  
number cause of the date hereinbefore set forth, and I do  
hereby certify that the foregoing transcript has been  
prepared by me or under my direction.

S:/ JOAN L. MORGAN, CSR  
Official Court Reporter  
Detroit, Michigan 48226

January 4<sup>th</sup>, 2011

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